

III. REMARKS

Status of the Claims

Claims 1,4,6 and 9 are amended and new claim 12 is added. Claims 1-12 are presented for further consideration.

Summary of the Office Action

Claims 1-2, and 6-7 stand rejected under 35 USC 102(e) on the basis of the cited reference Lebby, et al, U.S. Patent No. 6,158,884, Claims 3-5 and 8-11 stand rejected under 35USC103(a) based on the reference Lebby in view of the cited reference Olsen, U.S. Patent No. 4,847,818 or the cited reference Houlihan, U.S. Patent No 5,620,915.

Applicant has amended the claims to overcome the rejection based on 35 USC 112. In the amended claims 1-6 the body forms an "enclosure" for the components and the clasp is part of a housing into which the battery may be mounted. There is therefore a clear differentiation between the body and the clasp.

The Invention

As described in independent claims 1 and 6, a communication device is constructed with a planar body enclosing the components of the mobile communication device. A display screen is mounted on an upper surface of the body. First and second rigid side panels are attached to the body by hinges that provide limited pivotal motion of the side panels with respect to said body. In one position the side panels extend longitudinally and in a second position the panels extend downward to partially surround the wrist. A flexible band connected to said first and second panels to

hold the device on the wrist of the user. A clasp is connected to the band and forms a housing in which a battery is mounted.

In the alternate embodiments of claims 4 and 9, the clasp/housing is used to rigidly brace the side panels in the extended position. This feature is also described in new claim 12.

Discussion of the Cited Reference

The examiner relies on the cited reference Lebby to support the rejection based on anticipation. The device of Lebby is a watch that has a fold out display screen for use with an integral communication device. A specialize wrist band is fabricated from a textile material in which electrically conductive fibers are woven. This allows a transceiver to be embedded in the wrist band with a power source. A clasp connects the two sides of the wrist band together to form a continuous circuit. The wrist band, power source and transceiver are designed to maintain the flexible nature of the wrist band.

The device of Lebby is equipped with a watch face 14 on a housing 12. A display 27 for the communication device is mounted on a moveable portion 40 that folds out from the watch face for use. The Examiner characterizes this reference having:

"First (see 28) and second (between 15 and 24) side panels which are attached to body (12) by hinges (22, 24), these panels are moveable between a first position (fig.4) which is substantially in the plane

of the body, and a second position (fig. 1a) which is transverse to the plane of the body;
A flexible band (between 15-17, 28-20);
A housing (25, area of 20) having a clasp (17-19); and
A battery (20)."

The above characterization is not supported by the cited reference. The Examiner is equating a pair of flexible straps 26 to the rigid panels used in the subject invention. The examiner refers to a flexible band between 15-17, 29-30, and then first and second panels in the same vicinity. No matter how you describe it these elements are all part of the straps 26 and are continuous except for fastener 25. The flexible nature of strap portions 26 is shown in figure 4 of Lebby. There are no rigid panels in Lebby as required by the claims of this application.

The Examiner fails also to recognize that the housing 25, area 20 is called a fastener having clips 22 and 24 by Lebby, et al (see column 5 lines 34-26). Reference numeral 20 is a power source. There is no housing integral with a clasp as required by the claims of this application. Applicant submits that a power source imbedded in a fabric strap is not the equivalent of a battery enclosed in a housing integral with a clasp.

The Examiner refers to figure 4 as indicative of a first position, but it is an illustration of the watch of Lebby in the open position, there is nothing to indicate that this is an operational position in which the device is intended to be used.

With respect to new claim 12, the clasp housing serves to brace the rigid side panels in the open position. There is nothing in the device of the reference Lebby that provides this feature.

The Issue of Anticipation

It is well settled that a claim is anticipated, "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (See CHISOLM, Federal Circuit Guide, Pg. 1221).

The elements of the claim and their function and purpose within the claim must be reviewed in a manner similar to an infringement analysis. If the device described in the cited reference would not infringe if it was later, it will not anticipate if the reference is earlier.

Applying this analysis to the device of Lebby it is observed that significant elements of the claims are missing.

For example, claim 1 states:

"first and second rigid side panels attached to said body by hinges to provide limited pivotal motion of said side panels with respect to said body, wherein said side panels are moveable between a first position in which said panels extend longitudinally, substantially in the plane of said body and a second position in which said panels extend downward transverse to the plane of said body to partially surround the wrist;.....

a housing having a clasp integral therewith, said clasp connected to said flexible band to allow the device to be removably held on said wrist; and

a battery, forming the power supply for the device, mounted in said housing and connected to said device through said flexible band."

Equivalent language appears in independent claim 6. Since these elements are not part of the device of the cited reference Lebby, the device described therein, would not infringe and therefore, the reference does not support a rejection based on anticipation. This would also apply to the rejected dependent claims.

The Issue of Obviousness

The above described deficiencies of the primary reference is not remedied by the proposed combination with the teachings of the references Olsen or Houlihan. None of the cited references show a clasp formed as a battery housing.

Reliance on the reference Olsen is misplaced as there are no rigid side panels, but only a flexible band with a microphone and speaker at opposing sides of the clasp. The strap material is described as relatively stiff, but flexible. No supporting role for the clasp is contemplated nor is there any mention of placing the battery in the clasp.

Although the reference Houlihan has rigid segments they are all curved to fit the wrist, there is no flexible strap and no clasp according to this invention.


Applicant submits that the modification of the teachings Lebby in view of Olsen or Houlihan, in order to obtain the invention, as described in the amended claims submitted

herein, would not have been obvious to one skilled in the art.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,


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